Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 85-1940

In the Supreme Court of the United States

OCTOBER TERM, 1986

UNITED STATES OF AMERICA, PETITIONER

v.

CHEROKEE NATION OF OKLAHOMA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

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Petition for a Writ of Certiorari Filed May 23, 1986
Petition Granted October 6, 1986

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* The opinions of the district court and the court of appeals have been reproduced in the appendix to the petition for certiorari. See Sup. Ct. R. 30.1. Respondent has reproduced the land patent from the United States to the Cherokee Nation, as well as Public Law 97-385 (conferring jurisdiction on the district court to hear this action) and provisions of the Indian Claims Commission Act, in the appendix to its brief in opposition.

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF OKLAHOMA

Civil No. 83-306-C

CHEROKEE NATION OF OKLAHOMA

v.

UNITED STATES OF AMERICA

Chronological List of Relevant Docket Entries

DATE	PROCEEDINGS
5/23/83	COMPLAINT.
5/23/83	PRAECIPE For Summons.
5/23/83	ISSUING Summons (2) 60-day. (Given. to atty. for service).
6/7/83	Return on Summons: *served U.S. Atty.*, Muskogee, Oklahoma on *5/23/83*; served *Atty. Gen. of U.S.* by Certified Mail on *5/26/83*.
7/25/83	ANSWER of deft.
9/13/83	DOCKET mailed setting pretrial at Muskogee, Oklahoma on December 15, 1983 at 11:30 A.M.
9/29/83	MOTION of deft. to Strike date of Pre-Trial Conference.
9/29/83	Entering Order denying Motion of deft. to strike date of Pre-Trial Conference. (FHS) (Copies to counsel.)
11/21/83	JOINT PRETRIAL MEMO.

12/15/83	Said cause comes on for Pretrial: Plaintiff present by counsel, Andrew Wilcoxen. Defendant present by counsel, Terry Smith, (Corp. of Eng.) and Lynn Rubinstein. Court directs this matter stricken from the Pretrial Docket. Parties to file Briefs on Liability issue with primary emphasis on the navigation servitude issue, by Feb. 15, 1984. Further Parties to file Joint Motions for Summary Judgment by Feb. 15, 1984. Responses due March 30, 1984., with Reply if parties desire due Apr. 18, 1984. (FHS)
2/10/84	MOTION of Deft. for Judgment on the Pleadings.
2/10/84	BRIEF of Deft. in Support of Motion for Judgment on the Pleadings.
2/15/84	MOTION of Pltf. for Partial Summary Judgment as to Liability.
2/15/84	BRIEF of Pltf. in Support of Motion for Partial Summary Judgment.
3/30/84	RESPONSE of Pltf. to Defts. Motion for Judgment on the Pleadings
4/3/84	MOTION of defendant For Extension of time to file Response Brief and Reply Briefs.
4/3/84	Entering Order granting defendant an extension of time until May 14, 1984, to file its response to plaintiff's motion for partial summary judgment, and further granting an extension of time until June 11, 1984, for the parties to file reply briefs. (FHS) (Copies to Counsel).
5/14/84	MEMORANDUM by defendant in Opposition to Plaintiff's Motion for Summary Judgment and Reply Memorandum in Support of Defendant's Motion Judgment on the Pleadings.

6/6/84	ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT. (FHS)
6/13/84	ORDER (AMENDED) GRANTING Pltf's Motion for Partial Summary Judgment and denying deft's Motion for Partial Summary Judgment. (FSH) (Copies to counsel.)
6/19/84	(copy) Petition for Interlocutory appeal filed w/10th C. Court of Appeals from order 6/6/84.
10/9/84	Order of U.S. Court of appeals granting petition for leave to appeal. 84-2355
10/10/84	Forwarding Interlocutory Appeal consisting of one volume. (copies) (Copy of index in file) to Tenth Circuit.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 84-2355

CHEROKEE NATION OF OKLAHOMA

v.

UNITED STATES OF AMERICA

Chronological List of Relevant Docket Entries

DATE	FILINGS – PROCEEDINGS
10/4/84	CS.DKT – case docketed ROA.DUE – record on appeal due 10/14/84 DKT.ST.DUE – docketing statement due 10/25/84
10/11/84	*ROA.F* Record on appeal filed, Vol. I (Pleadings)(160pp); Orig.
10/11/84	NAPR.F Notice of Appearance filed by Wilcoxen attorney for Appellee
10/20/84	NAPR.F Notice of Appearance filed by Minear & Gelin as attys for Appellant
10/19/84	NAPR.F Notice of Appearance filed by Niebell as attorney for Appellee
10/25/84	DKT.ST.F Appellant's docketing statement filed, original + 6cc, cs
11/5/84	NAPR.F Notice of Appearance filed by Yaroschuk as atty for Appellee
2/15/85	O.ASGN.CAL. Order Assigned to Calendar B- Holloway (parties served by mail). BR.DUE Appellant's Brief Due 3/8/85.
3/8/85	BR.F Appellant's brief filed, orig. + 9cc, c/s

3/26/85	NAPR.F. Notice of appearance filed by James Wilcoxen, atty for appellee to replace attys. Andrew Wilcoxen & Michael S. Yaroschuk who have died.
	M.EXTM.BR.DISP. Appellee's motion for extension of time to 4/18/85 to file brief filed 3/25/85 & granted-HKP (orig & 3cc, c/s) (parties served by mail)
4/18/85	BR.F Appellee's brief filed, Orig. & 10cc., c/s.
5/3/85	BR.F Appellant's reply brief filed, orig. + 9cc., c/s.
6/11/85	HRG.SET.JULY'85 TERM, DENVER
8/6/85	CS.ARG.SUBM—Moore, Seth, Matsch
8/13/85	ADD.AUTH.F/SUBM. Appellees' supplemental authority filed 8/12/85 (orig) & submitted to panel.
1/23/86	OPN.F Published, signed opinion filed—Moore, Seth, Matsch, Writing Judge is Moore. (parties served by mail)
	DIS.OPN.F Published, dissenting opinion filed—Seth. (parties served by mail)
	JM.DISP Judgment is affirmed.
2/3/86	M.EXTM.F.P.REHRG.F/SUBM. Appellant's motion for extension of time to 3/10/86 to file petition for rehearing filed. O&3 c/s -and submitted to panel.
2/6/86	M.EXTM.F.P.RHERG.DISP. Granted appellant's motion for extension of time to 3/10/86 to file petition for rehearing. Moore, Seth, Matsch
3/11/86	MDT.ISS Mandate issued to district court
4/24/86	ROA.RTN.DC. Record on appeal returned to district court (Vol I)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

Civil No. 83-306-C

CHEROKEE NATION OF OKLAHOMA, PLAINTIFF,

v.

THE UNITED STATES, DEFENDANT.

[Filed May 23, 1983]

COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff, Cherokee Nation of Oklahoma, respectfully represents as follows:

COUNT I

1. Pursuant to the Act of Congress, approved December 23, 1982 (Public Law 97-385, 97th Cong., 96 Stat. 1944), Congress conferred jurisdiction

> "[U]pon the United States District Court for the Eastern District of Oklahoma to hear, determine and render judgment, under the jurisdictional provisions of section 2 of the Indian Claims Commission Act of August 13, 1946, as amended (60 Stat. 1049, 1050; 25 U.S.C. 70a), on any claim which the Cherokee Nation of Oklahoma may have against the United States for any and all damages to Cherokee tribal assets related to and arising from construction of the Arkansas River Navigation System, including, but not limited to, the value of sand, gravel, coal, and other resources taken, the value of damsites and power-

> heads of dams constructed on that part of the Arkansas riverbed within Cherokee domain in Oklahoma, without the authority or consent of said Cherokee Nation; * * * all of said lands or interests therein being held by said Cherokee Nation by virtue of treaties and by patent issued by the United States granting said lands to said Cherokee Nation in fee simple, or otherwise."

2. Plaintiff, Cherokee Nation of Oklahoma, was originally located in the southeastern portion of the United States in what are now the States of Virginia, North and South Carolina, Georgia, Kentucky and Tennessee. Pursuant to a series of treaties with the United States, executed during the period 1817 and 1835, and under a patent issued by the United States thereunder in 1838, the Cherokee Nation was removed from its ancestral lands in the east and relocated on 13,594,135.14 acres of land in what was then known as Indian Territory, now a part of the State of Oklahoma.

3. During the period 1897-1906, the United States Congress enacted a series of Acts intended to establish a Cherokee tribal roll, to divide the tribal property among the enrolled members, to permit the formation and admission of the State of Oklahoma to the Union, which would include the people and lands patented to the Cherokee Nation. Under said Acts defendant, as trustee of plaintiff, assumed full administrative control over all of the property and affairs of the Cherokee Nation to carry out the purposes of said Acts. *Cherokee Nation v. Hitchcock*, 187 U.S. 294, 306 (1902).

4. At all times mentioned herein plaintiff, the Cherokee Nation of Oklahoma, has maintained its existence as an identifiable nation of North American Indians, and presently has enrolled tribal members and a Constitution with a representative form of government,

approved by the United States Secretary of the Interior. Plaintiff maintains its tribal office and headquarters at Tahlequah, in the Eastern District of Oklahoma.

5. Plaintiff brings this lawsuit pursuant to its inherent power and authority as a sovereign Indian nation, and in accordance with the Act of Congress, approved December 23, 1982, 96 Stat. 1944, and the jurisdictional provisions of Section 2 of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049 (25 U.S.C. 70a et seq.).

6. Defendant in this action is the United States of America operating through its various governmental and administrative agencies, such as the United States Army Corps of Engineers, the Department of the Interior, and the Southwest Power Administration.

7. Pursuant to the Treaty of New Echota, executed December 29, 1835, 7 Stat. 478 (2 Kapp. 439), the Cherokee Nation agreed to relinquish its ancestral lands in the east and to remove to lands west of the Mississippi River. The treaty in pertinent part stated:

> ". . . ."
>
> "Article 2. Whereas by the treaty of May 6th, 1828 and the supplementary treaty thereto of Feb. 14th, 1833 with the Cherokees west of the Mississippi the United States guaranteed and secured to be conveyed by patent, to the Cherokee nation of Indians the following tract of country 'Beginning at a point on the old western territorial line of Arkansas Territory being twenty-five miles north from the point where the territorial line crosses Arkansas river, thence running from said north point south on the said territorial line where the said territorial line crosses Verdigris river; thence down said Verdigris river to the Arkansas river; thence down said Arkansas to a point where a stone is placed opposite the east or lower bank of Grand river at its junction with the Arkansas;

thence running south forty-four degrees west one mile; thence in a straight line to a point four miles northerly, from the mouth of the north fork of the Canadian; thence along the said four mile line to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to that point on the Arkansas where the eastern Choctaw boundary strikes said river and running thence with the western line of Arkansas Territory as now defined, to the southwest corner of Missouri; thence along the western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to Grand river; thence up said Grand river as far as the south line of the Osage reservation, extended if necessary; thence up and between said south Osage line extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line will make seven millions of acres within the whole described boundaries. In addition to the seven millions of acres of land thus provided for and bounded, the United States further guaranty to the Cherokee nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend:

"*Provided however* That if the saline or salt plain on the western prairies shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees; And letters patent shall be issued by the United States as soon as practicable for the land hereby guaranteed.

". . ."

"Article 3. The United States also agree that the lands above ceded by the treaty of Feb. 14, 1833, including the outlet, and those ceded by this treaty, shall all be included in one patent executed to the Cherokee nation of Indians by the President of the United States according to the provisions of the act of May 28, 1830.

". . . ."

"Article 5. The United States hereby covenant and agree that the lands ceded to the Cherokee nation in the foregoing article shall, in no future time without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their people or such persons as have connected themselves with them; provided always that they shall not be inconsistent with the constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and also, that they shall not be considered as extending to such citizens and army of the United States as may travel or reside in the Indian country by permission according to the laws and regulations established by the Government of the same."

8. The Treaty of 1835 contained limited and specific easements and reservations with regard to gathering of salt on the Cherokee land, the rights to land assigned to the Quapaws, and, lastly, the right of the United States to establish military roads and posts, and to maintain the post at Fort Gibson.

9. On December 31, 1838 the promised patent was duly issued by the United States and recorded in the General Land Office conveying to the Cherokee Nation the above-described lands, as set forth in the Treaty of 1835. Said lands, thus described by metes and bounds, conveyed to the Cherokee Nation said 13,594,135.14 acres in what was then known as Indian Territory, now a part of the State of Oklahoma. Included within the metes and bounds description was the navigable portion of the Arkansas River. Said patent provided, with respect to the lands granted therein, that said Cherokee Nation was "to have and hold the same together with all rights, privileges and appurtenances thereunto belonging to said Cherokee Nation forever. . . ."

10. For more than fifty years the Cherokee Nation occupied the patented lands and as the fee simple owner exercised full dominion and control over such lands, including the navigable portion of said Arkansas River. Plaintiff at no time since 1835 divested itself of title to the bed and banks of said Arkansas River within the metes and bounds description of said patent.

11. By letter dated March 28, 1908, the Secretary of the Interior erroneously determined that the Cherokee Nation was not entitled to royalties from the excavation of sand and gravel because title to the bed of the Arkansas River within the Cherokee Nation passed to the State of Oklahoma upon its admission to the Union on an equal footing with the other states.

12. Defendant's Army Corps of Engineers, pursuant to the Flood Control Act of 1944, 58 Stat. 883, 890, and the River and Harbor Act of July 24, 1946, 60 Stat. 634, 636, constructed a series of locks and dams on that portion of the Arkansas River owned in fee simple by the Cherokee Nation, without its consent, and without the

payment of just compensation therefor, in violation of the Fifth Amendment to the Constitution of the United States.

13. In 1970, the United States Supreme Court, in *Choctaw Nation et al. v. Oklahoma,* 397 U.S. 620, declared that the Cherokee Nation was the present owner of the fee simple title to the bed and banks of the Arkansas River within the territorial domain of the Cherokee Nation, and that the Cherokee Nation was entitled to an accounting for mineral royalties erroneously acquired by the State of Oklahoma.

14. In constructing the dams and locks on that portion of the Arkansas River flowing through the Cherokee National domain, and in altering the channel thereof, defendant has destroyed, or caused to be lost, vast deposits of sand and gravel constituting the valuable property of plaintiff, without payment to plaintiff therefor, and for which plaintiff herein demands just compensation.

15. At all times mentioned herein there has existed between plaintiff and defendant a fiduciary relationship, the defendant being the trustee and the plaintiff being its dependent Indian ward; that under such relationship the defendant has the right to preserve, manage and control the property and affairs of plaintiff for its benefit, but cannot destroy or dissipate said trust property, or use it for its own purposes, without providing just compensation to plaintiff therefor; that defendant, in violation of its duty as trustee herein has failed to exercise the highest fiduciary standards in destroying the property rights of plaintiff in that portion of the Arkansas River within the national domain of plaintiff; and its dealings with plaintiff's riverbed property is in plain violation of fair and honorable dealings.

16. Defendant's United States Army Corps of Engineers has located locks and dams on plaintiff's Arkansas riverbed property, without plaintiff's consent

and without providing just compensation therefor; and such structures have constituted a continuing trespass, and continue presently to constitute a continuing trespass on said property of plaintiff; and such actions of defendant continue to deprive plaintiff of the benefits to be derived from its fee simple title to said property.

COUNT II

17. Plaintiff incorporates by reference herein paragraphs 1 through 7 of Count I.

18. Pursuant to the Flood Control Act of 1944, 58 Stat. 883, 890, and the River and Harbors Act of 1946, 60 Stat. 634, 636, defendant, through action of its United States Army Corps of Engineers, commencing in 1957, constructed a series of locks and dams on the Arkansas River designated as the Arkansas River Navigation System (the McClellan-Kerr Navigation Project) on lands owned in fee simple by the Cherokee Nation:

The Webbers Falls Lock and Dam, No. 16, located about five miles northwest of the Town of Webbers Falls, Muskogee County, Oklahoma;

The Robert S. Kerr Lock and Dam, No. 15, located at Short Mountain, about eight miles southerly from the Town of Sallisaw, Sequoyah County, Oklahoma; and

The W. D. Mayo Lock and Dam, No. 14, located about nine miles southwesterly of Fort Smith, Arkansas, in Sequoyah County, Oklahoma.

19. Said locks and dams described above are located in whole or in part on lands granted by the United States to the Cherokee Nation in the 1838 patent, and are still owned by plaintiff, Cherokee Nation of Oklahoma.

20. Defendant constructed said dams and locks without the premission or consent of plaintiff Indian nation. Said locks and dams, located as they are, on plaintiff's property constitute a taking without just compensation in violation of the Fifth Amendment of the

Constitution of the United States; and also constitute a breach of the fiduciary duty owed by defendant to plaintiff, its dependent Indian ward. Defendant's actions in permitting the destruction and dissipation of plaintiff's property violate the basic principles of fair and honorable dealing between plaintiff and defendant.

21. Plaintiff has been deprived of the use of its property by defendant's wrongful action in constructing said locks and dams, including, but not limited to, the private development of hydroelectrical energy.

22. The locks and dams constructed by defendant generate hydroelectric power which is marketed by the defendant's Southwest Power Administration to cooperatives and municipalities in the area. Plaintiff Indian nation has not been compensated for the loss and deprivation of this valuable property right in its said lands.

WHEREFORE, plaintiff prays:

1. That plaintiff be awarded just compensation from defendant for the fair market value of the Cherokee Nation's lands thus intruded upon by defendant, and taken by the United States Army Corps of Engineers in the construction of the locks and dams, Nos. 14-16, in violation of the Fifth Amendment to the Constitution of the United States;

2. That plaintiff be awarded just compensation from defendant for the fair market value of the Cherokee Nation's lands thus intruded upon by defendant, and taken by the United States Army Corps of Engineers in the construction of locks and dams Nos. 14-16, in violation of the principles of fair and honorable dealings between defendant and plaintiff, its dependent Indian ward;

3. That plaintiff be awarded just compensation for the past and future loss of the sand and gravel and coal deposits as a consequence of defendant's action in constructing said locks and dams and altering the channel of said Arkansas River; said assets thus lost to plaintiff and

taken by defendant without the payment of just compensation therefor, in violation of the Fifth Amendment to the Constitution of the United States;

4. That plaintiff be awarded just compensation for the past and future loss of the sand and gravel deposits as a consequence of defendant's action in constructing said locks and dams and altering the channel of said Arkansas River; said assets thus being lost to plaintiff and taken by defendant without the payment of just compensation therefor, in violation of the principles of fair and honorable dealings between defendant and plaintiff, its dependent Indian ward;

5. That plaintiff be awarded just compensation for the fair market value of the damsites thus taken by defendant, and for the electrical energy generated at said sites, which property has been taken by defendant in violation of the Fifth Amendment to the Constitution of the United States; and

6. That plaintiff be awarded just compensation for the fair market value of the bed and banks of the Arkansas River, which defendant has taken from plaintiff in violation of the Fifth Amendment to the Constitution of the United States: and/or in violation of its duties as trustee of plaintiff, and contrary to the most exacting fiduciary

standards, and in violation of the principles of fair and honorable dealings between defendant and plaintiff, its dependent Indian ward.

Respectfully submitted,

/s/ ANDREW WILCOXEN
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

Civil No. 83-306-C

CHEROKEE NATION OF OKLAHOMA, PLAINTIFF,

v.

UNITED STATES, DEFENDANT.

[Filed July 25, 1983]

ANSWER

TO THE HONORABLE UNITED STATES DISTRICT COURT:

FIRST DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted.

SECOND DEFENSE

In constructing a series of locks and dams on the navigable reach of the Arkansas River in Oklahoma, the United States was exercising its rights under Article I, Section 8, Clause 3 of the Constitution of the United States.

THIRD DEFENSE

If any damages were sustained by plaintiff, it did not result from a taking of property in the stream bed, but from the lawful exercise of a navigational servitude, a power to which the bed of the Arkansas River has always been subject and for which no compensation need be paid.

FOURTH DEFENSE

The ruling of the Court in *Choctaw Nation* v. *Oklahoma*, 397 U.S. 620 (1970), did not convey present title in the bed of the navigable portion of the Arkansas River to the Cherokee Nation.

FIFTH DEFENSE

There is no trust relationship between the United States and plaintiff in the bed of the Arkansas River.

SIXTH DEFENSE

Because plaintiff does not have present title to the bed of the Arkansas River and due to the United States' navigational servitude in that River, there has not been a trespass committed by defendant.

SEVENTH DEFENSE

Defendant answers, through its attorney, the allegation of the complaint as follows:

1. Defendant admits the allegations of paragraph 1.
2. Defendant admits the allegations of paragraph 2.
3. Defendant admits the allegations of the first sentence of paragraph 3. Defendant denies the allegations of the second sentence of paragraph 3.
4. The allegations of the first sentence of paragraph 4 are conclusions of law to which no reply is required. Defendant admits the allegations of the second sentence of paragraph 4.
5. The allegations of paragraph 5 are conclusions of law to which no reply is required.
6. Defendant admits the allegations of paragraph 6, but avers that the correct name of the last listed agency is the Southwestern Power Administration which, in 1977, was transferred from the Department of the Interior to the Department of Energy.

7. Defendant admits the allegations of paragraph 7 and avers that the Treaty speaks for itself.

8. Defendant admits the allegations of paragraph 8 and avers that the Treaty speaks for itself.

9. Defendant admits the allegations of paragraph 9 and avers that the Treaty speaks for itself.

10. Defendant denies the allegations of paragraph 10.

11. Defendant avers that the letter dated March 28, 1908 speaks for itself. The remaining allegations of paragraph 11 are conclusions of law to which no reply is required.

12. Defendant admits that the United States Corps of Engineers, pursuant to the Flood Control Act of 1944, 58 Stat. 883, and the River and Harbor Act of July 24, 1946, 60 Stat. 634, built a series of structures on the Arkansas River and that certain of these structures are situated within the navigable reach of the Arkansas River. Defendant denies that plaintiff is the present owner in fee simple absolute of the bed of the Arkansas River and denies further that plaintiff is entitled to any just compensation under any provision of the Constitution.

13. Defendant denies the allegations of paragraph 13.

14. Defendant denies the allegations of paragraph 14.

15. Defendant denies the allegations of paragraph 15.

16. Defendant admits that it has located certain locks and dams on the navigable reach of the Arkansas River. The rest of the allegations in paragraph 16 are denied.

17. Defendant incorporates by reference herein paragraphs 1 through 16.

18. Defendant admits the allegations of paragraph 18, except to deny that the project was built on lands owned in fee simple by the Cherokee Nation.

19. Defendant admits that the structures listed in plaintiff's paragraph 18 are located in whole or in part on lands granted by the United States to the Cherokee Nation in the 1838 patent, but denies that plaintiff still owns the land.

20. Defendant admits the allegations of the first sentence of paragraph 20, but denies all other allegations of that paragraph.

21. Defendant denies the allegations of paragraph 21.

22. Defendant admits that certain locks and dams located on the navigable reach of the Arkansas River do generate hydroelectric power and energy which is marketed by the Southwestern Power Administration under § 5 of the Flood Control Act of 1944, 16 U.S.C. 828s. Defendant denies the remaining allegations of paragraph 22.

All allegations which are not specifically admitted are denied.

Wherefore, defendant prays that this Court enter judgment for the United States, including attorneys fees and costs and other expenses which the Court determines to be appropriate.

Respectfully submitted,

GARY L. RICHARDSON
United States Attorney

SCOTT LANDON
Assistant United States Attorney

/s/LYNN RUBINSTEIN

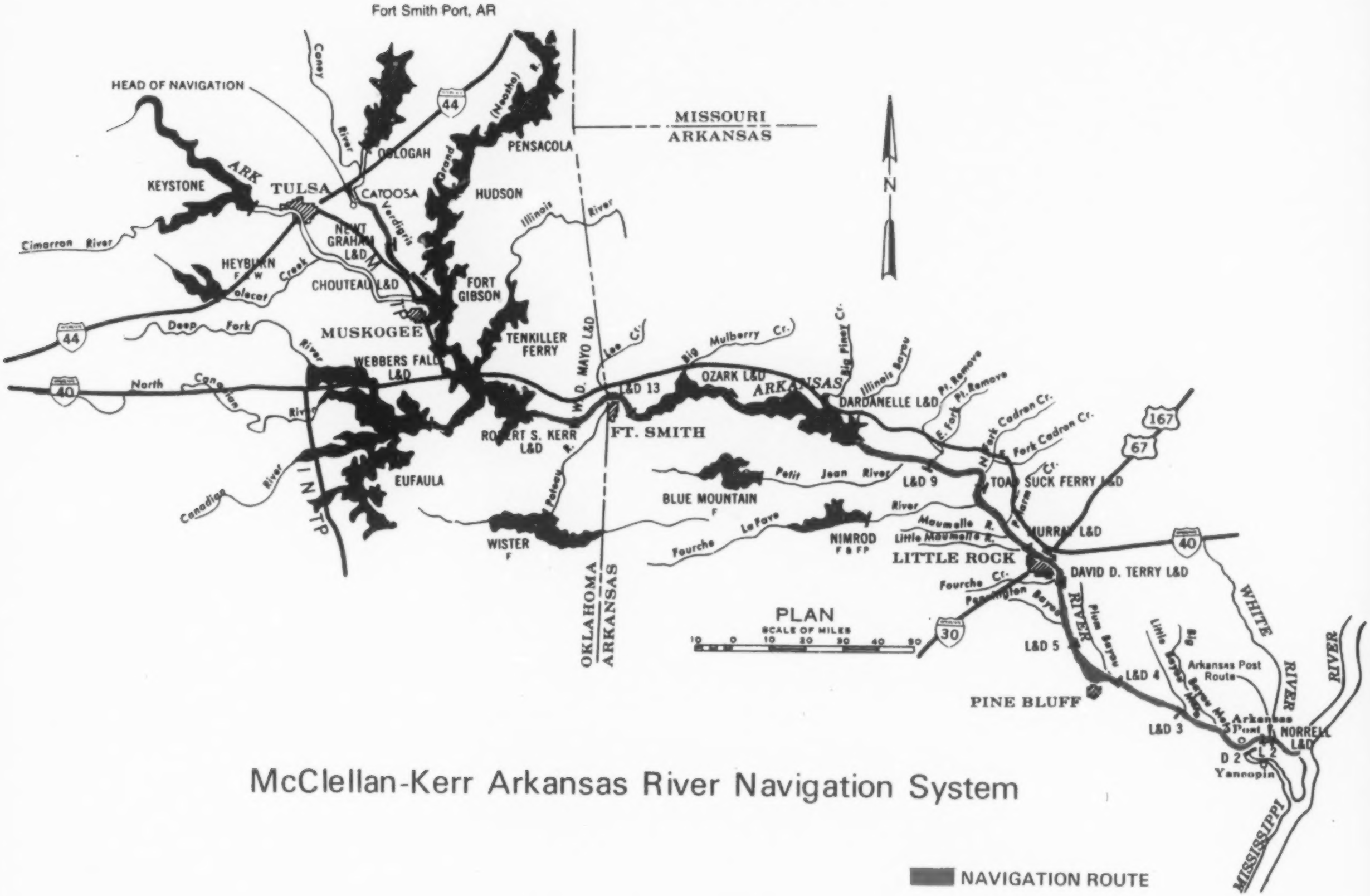
Lynn Rubinstein
Attorney
Department of Justice
Washington, D.C. 20530
(202) 633-5397

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer has been placed in the mail, postage prepaid, on July 22, 1983 to the following:

Andrew Wilcoxen
P.O. Box 357
Muskogee, Oklahoma 74402-0357

/s/ LYNN RUBINSTEIN
Lynn Rubinstein



McClellan-Kerr Arkansas River Navigation System

In the Supreme Court of the United States

No. 85-1940

UNITED STATES, PETITIONER

v.

CHEROKEE NATION OF OKLAHOMA

ORDER ALLOWING CERTIORARI. Filed October 6, 1986.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

Justice Scalia took no part in the consideration or decision of this petition.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1986—181-483/40500